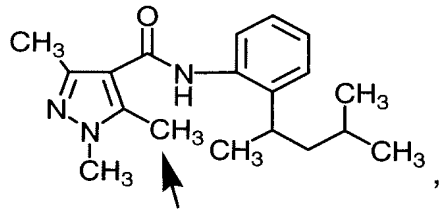
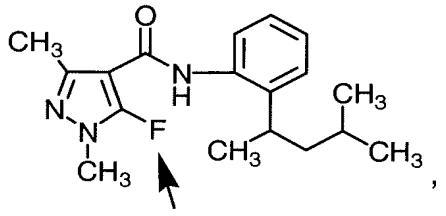
REMARKS

Applicants acknowledge withdrawal of previous rejections and introduction of a new ground of rejection as stated in the Office Action at pages 3 and 8. The new rejections are an obviousness rejection of Claims 11, 12, and 15 based on WO 03/010149 ("Elbe et al"), which had previously been cited in a withdrawn anticipation rejection under 35 U.S.C. 102, and an obviousness rejection of Claim 17 based on Elbe et al in view of U.S. Patent 5,496,568 ("Winston"). Applicants note in this regard that the second underlined sentence at page 8 of the current Office Action is incomplete but assume that the sentence is intended to summarize the new obviousness rejections. If more was intended, Applicants would appreciate further clarification.

Applicants also acknowledge the statement in the Office Action at page 2 about the scope of the examination and note particularly the further statements that (1) the elected species (i.e., the compound of Applicants' Example 5) is free of prior art and (2) examination has been expanded to include N-[2-(1,3-dimethylbutyl)-phenyl]-5-fluoro-1,3-dimethyl-1H-pyrazole-4-carboxamide). As was pointed out for the convenience of the Examiner in Applicants' previous Amendment dated February 27, 2009, the compound of Applicants' Example 5 has the formula



whereas the compound identified in the Office Action has the formula



(where the structural difference is shown by arrows).

In view of the expansion of examination beyond the elected species and further in view of the grounds of rejection discussed below, Applicants have amended their claims to limit group A to pyrazoles (A1) (the subject matter of

Claim 15, now canceled) in which substituent R^{10} no longer includes the halogens chlorine, bromine, and iodine (note that fluorine was already excluded) and the pseudohalogen cyano and respectfully request that embodiments of their invention in which group A is a pyrazoles (A1) be found allowable.

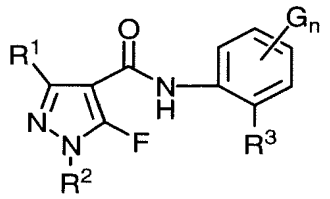
Applicants reserve the right to file one or more divisional applications to the non-elected subject matter.

Rejections under 35 U.S.C. 103

A. Elbe et al

Claims 11, 12, and 15 stand rejected under 35 U.S.C. 103(a) as being unpatentable over WO 03/010149 ("Elbe et al"). Applicants respectfully traverse.

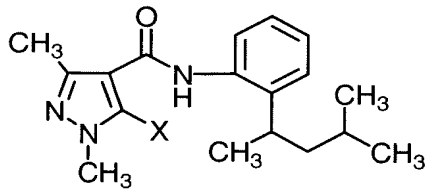
As fully discussed in Applicants' previous Amendment, Elbe et al discloses fungicidal pyrazolylcarboxanilides of the following formula (which for convenience is oriented in the same manner as the formulas shown in Applicants' claims)



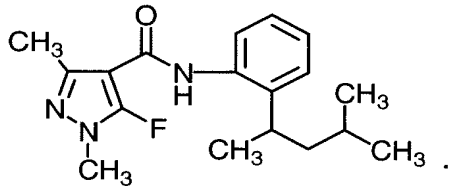
in which **R^1** is hydrogen, cyano, halogen, nitro, (halo)alkyl, (halo)alkylthio, or amino-carbonylalkyl; **R^2** is hydrogen, (halo)alkyl, alkenyl, cycloalkyl, (halo)alkylthioalkyl, or (halo)alkoxyalkyl; **R^3** is unsubstituted C_2-C_{20}-alkyl, optionally halogen- or cycloalkyl-substituted C_1-C_{20}-alkyl, or optionally halogen- or cycloalkyl-substituted alkenyl or alkynyl; **G** is halogen or alkyl; and **n** is 0, 1, or 2. E.g., page 1, line 16, through page 2, line 19. A required featured of such compounds is the presence of a 5-fluoro substituent on the pyrazole ring.

In contrast, the pyrazole compounds of Applicants' invention as now claimed do not have a 5-fluoro substituent on the pyrazole ring.

The Office Action, however, states that compounds within the scope of Applicants' claimed invention having the formula



in which X is Cl, Br, or I (although the formulas in Applicants claims use R^{10} instead of X) are obvious structural analogs of the corresponding known fluoro-substituted compound having the formula



In view of Applicants' current amendments to exclude embodiments in which R^{10} could be a halogen or pseudohalogen (i.e., chlorine, bromine, iodine, cyano, or the previously excluded fluorine) and further in view of the acknowledgement in the Office Action that the corresponding methyl-substituted compound of Applicants' Example 5 is free of prior art, Applicants respectfully submit that they have traversed this ground of rejection.

Applicants accordingly submit that their claimed invention is not rendered obvious by Elbe et al.

B. Elbe et al in view of Winston

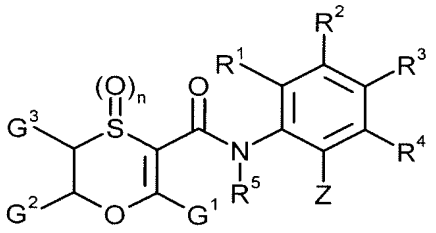
Claim 17 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Elbe et al as applied to Claims 11, 12, and 15 and further in view of U.S. Patent 5,496,568 ("Winston"). Applicants respectfully traverse.

Applicants' Claim 17 is directed to compositions containing compounds of their Claim 11 and one or more extenders and/or surfactants. The Office Action relies upon Elbe et al for the disclosure of the 5-fluoropyrazoles discussed above in the anticipation rejection of Claims 11, 12, and 15 and relies upon Winston for the disclosure of formulations of such compounds that also contain surfactants. Since Applicants' claims as amended exclude any 5-halogen-substituted pyrazoles (as discussed above with respect to the anticipation rejection based on Elbe et al) and further in view of the acknowledgement in the Office Action that the corresponding methyl-substituted compound of Applicants' Example 5 is free of prior art, Applicants respectfully submit that Elbe et al would not itself lead those skilled in the art to their claimed invention and that Winston adds nothing that would bridge the gap between Elbe et al and Claim 17.

Applicants therefore respectfully submit that Claim 17 is not rendered obvious by Elbe et al, whether taken alone or in combination with Winston et al.

Copending Application

Applicants note by way of comment that the present application was relied upon for a provisional obviousness-type double patenting rejection in copending Application Serial No. 10/544,897 (filed February 2, 2006), which is directed to oxathiincarboxamides having the formula



(where the various groups are defined therein), presumably because embodiments of the present application include compounds in which group A is (A5). See Office Action for '897 application dated May 9, 2008, at pages 5-6. The rejection was subsequently withdrawn in a Office Action dated December 16, 2008, which acknowledged distinctions between the respective compounds. Applicants also note that the currently amended claims of the present application are not directed to embodiments in which group A can be (A5).

In view of the preceding amendments and remarks, allowance of the claims is respectfully requested.

Respectfully submitted,

By _____
Richard E. L. Henderson
Attorney for Applicants
Reg. No. 31,619

Bayer CropScience LP
2 T.W. Alexander Drive
Research Triangle Park, NC 27709
Phone No.: (919) 549-2183
Facsimile No.: (919) 549-3994

Q:Patents/Prosecution Documents/8779/8779 amendment 7-31-09.doc